

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TAMARA JOLENE MILLER,

Defendant.

No. 07-CR-2029-LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NUMBER 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NUMBER 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

INSTRUCTION NUMBER 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NUMBER 4

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses, the stipulations of the parties and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors or the attorneys during the jury selection process is not evidence.
3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

INSTRUCTION NUMBER 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NUMBER 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NUMBER 7

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

You have heard evidence that some witnesses were once convicted of crimes. You may use that evidence only to help you decide whether to believe the witness and how much weight to give his testimony.

INSTRUCTION NUMBER 8

The government and the defendant have stipulated—that is, they have agreed—that certain facts are as counsel have stated. You must, therefore, treat those facts as having been proved.

INSTRUCTION NUMBER 9

You have heard testimony that the defendant made statements to law enforcement officers in this case. It is for you to decide:

- (1) whether the defendant made the statements and
- (2) if so, how much weight you should give to them.

In making these two decisions, you should consider all of the evidence, including the circumstances under which the statements may have been made.

INSTRUCTION NUMBER 10

You have heard testimony from a person described as an expert. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state his or her opinions on matters in that field and may also state the reasons for his or her opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used and all the other evidence in the case.

INSTRUCTION NUMBER 11

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdicts, in the same condition as it was received by you.

INSTRUCTION NUMBER 12

The Indictment in this case charges that the defendant committed firearms crimes. The defendant has pleaded not guilty to the crimes with which she is charged.

As I told you at the beginning of trial, an Indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against her. The presumption of innocence alone is sufficient to find a defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crimes charged.

Keep in mind that each count charges a separate crime. You must consider each count separately and return a separate verdict for each count.

There is no burden upon the defendant to prove that she is innocent. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

INSTRUCTION NUMBER 13

The crime of possession of an unregistered firearm, as charged in Count 1 of the Indictment, has four essential elements, which are:

- One,* on or about July 25, 2007, the defendant knew she had a firearm in her possession;
- Two,* the defendant knew the firearm was a weapon made from a shotgun and had an overall length of less than 26 inches or a barrel length of less than 18 inches;
- Three,* the firearm was capable of operating as designed; and
- Four,* the firearm was not registered to the defendant in the National Firearms Registration and Transfer Record.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of Count 1; otherwise you must find the defendant not guilty of Count 1.

INSTRUCTION NUMBER 14

The crime of being in possession of a firearm with an obliterated serial number, as charged in Count 2 of the Indictment, has four essential elements, which are:

- One,* on or about July 25, 2007, the defendant knowingly possessed a firearm;
- Two,* that firearm's importer's or manufacturer's serial number had been removed, obliterated or altered;
- Three,* the defendant knew the importer's or manufacturer's serial number had been removed, obliterated or altered; and
- Four,* the firearm had previously been shipped or transported in interstate commerce.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of Count 2; otherwise you must find the defendant not guilty of Count 2.

INSTRUCTION NUMBER 15

The crime of being a prohibited person in possession of a firearm, as charged in Count 3 of the Indictment, has three essential elements, which are:

- One,* the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year;
- Two,* the defendant thereafter knowingly possessed a firearm, that is, a Lorcin .25-caliber pistol, with an obliterated serial number, or a New England 20-gauge shotgun with no serial number; and
- Three,* the firearm was transported across a state line at some time during or before the defendant's possession of it.

The government need not prove the defendant possessed both firearms; proof of possession of either is sufficient to convict. However, you must unanimously agree on which was possessed.

If all of these essential elements have been proved beyond a reasonable doubt as to Count 3, then you must find the defendant guilty of that count; otherwise you must find the defendant not guilty of Count 3.

INSTRUCTION NUMBER 16

The term "firearm" means any weapon which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

INSTRUCTION NUMBER 17

It is not necessary for the government to prove the defendant knew that the firearms charged in the Indictment had traveled in interstate commerce, that she personally transported the firearms in interstate commerce, or that she intended to violate a particular statute. Likewise, it is not necessary for the government to prove that the defendant knew that it was illegal to have the firearms in her possession within the meaning of the law. Nor is it necessary for the government to prove who owned the firearms at any time. The statute involved speaks in terms of possession, not ownership.

INSTRUCTION NUMBER 18

You will note the Indictment charges that the offenses were committed "on or about" a certain date. The government need not prove with certainty the exact date or the exact time period of an offense charged. It is sufficient if the evidence establishes that an offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NUMBER 19

The law recognizes several kinds of "possession." A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is in "actual possession" of it.

A person who, although not in actual possession, has both the power and intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in "constructive possession" of it.

If one person alone has actual or constructive possession of a thing, possession is "sole." If two or more persons share actual or constructive possession of a thing, possession is "joint."

Whenever the word "possession" is used in these instructions, it includes "actual" as well as "constructive" possession and also "sole" as well as "joint" possession.

INSTRUCTION NUMBER 20

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NUMBER 21

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have said, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NUMBER 22

An act is done “knowingly” if the defendant is aware of the act and does not act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that her acts or omissions were unlawful. You may consider evidence of the defendant’s words, acts or omissions along with all the other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NUMBER 23

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NUMBER 24

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because each verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Finally, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Each verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

Attached to these instructions you will find Verdict Forms and Interrogatory Forms.

INSTRUCTION NUMBER 25

The Verdict Forms and Interrogatory Forms are simply the written notice of the decisions that you reach in this case. The answers to the Verdict Forms and Interrogatory Forms must be the unanimous decisions of the jury.

You will take the Verdict Forms and Interrogatory Forms to the jury room, and when you have completed your deliberations and each of you has agreed on an answer to the Verdict Forms and Interrogatory Forms, your foreperson will fill out the Verdict Forms and Interrogatory Forms, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdicts as accord with the evidence and these instructions.

February 5, 2008

DATE



LINDA R. READE

CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA